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Paper No. 11

In re Application of
Trevor Smith
Application No. 09/766,256
Filed: January 18, 2001
Attorney Docket No. BSE 301

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: DECISION ON PETITION
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This is a decision on the petition filed on February 21, 2003 by which petitioner requests withdrawal of the holding that this application stands abandoned for failure to file a reply to the Office letter dated May 16, 2002. No fee is required for the petition.

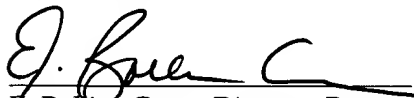
The petition is granted.

Petitioner alleges that the application is not abandoned because a reply to the Office letter in question was in fact filed on November 18, 2002. Petitioner further alleges that this reply was timely by reason of a concurrently filed request for a three month extension of time together with a check in the amount of \$460.00 for the extension fee. Petitioner has supported these allegations by including copies of these papers, each of which has affixed thereto a 37 CFR 1.8(a) certificate of mailing dated November 18, 2002, a Monday.

Pursuant to 37 CFR 1.8(b), it is clear that petitioner filed a reply to the Office letter dated May 16, 2002, and concurrently filed a request for a three month extension of time. However, petitioner has not furnished any evidence supporting the filing of a check for the extension fee, and Office financial records do not show that the fee was received. It is noted, however, that petitioner has also included a copy of the cover letter for the amendment, which also requests an extension of time and includes authorization to charge Deposit Account No. 11-1540 for any required fees. This authorization is sufficient to make the requested extension effective, and therefore it appears that the amendment filed on November 18, 2002 was in fact timely.

In view of the fact that a timely reply to the Office letter in question was filed, it is clear that this application is not abandoned. Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application will be forwarded to the Head Supervisory Applications Examiner to charge Deposit Account No. 11-1540 in the amount of \$460.00 for a three month extension of time. In the event that petitioner's originally filed check is subsequently negotiated, petitioner may request a refund of the duplicate extension fee. The application will thereafter be forwarded to the examiner for action on the reply filed on November 18, 2002.

PETITION GRANTED.


E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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